



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 CHURCH STREET  
L & C ANNEX 6TH FLOOR  
NASHVILLE TN 37243-1534**

July 31, 2007

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0976 2339**

Dr. Lee Hunter  
1002 Hillcrest Ave.  
Columbia, Tennessee 38401

Subject: DIRECTOR'S ORDER NO. WPC07-0156  
DR. LEE HUNTER  
HICKMAN COUNTY, TENNESSEE

Dear Dr. Hunter:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0670.

Sincerely,

Vojin Janjic  
Manager, Enforcement and Compliance Section

cc: DWPC-EFOCL-TCW  
DWPC-NCO-E&C

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
	)	
<b>DR. LEE HUNTER</b>	)	
	)	
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC07-0156</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Dr. Lee Hunter (hereinafter the "Respondent") is the owner of approximately 1,348 acres located off Highway 230 in Hickman County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent at 1002 Hillcrest Avenue, Columbia, Tennessee 38401.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined at T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

### **V.**

Gerry Branch is referred to herein as “waters of the state,” as defined in T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been

classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, "Use Classifications For Surface Waters," is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Gerry Branch has been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## VI.

T.C.A. §69-3-108 requires a person to obtain a permit from the department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VII.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by submittal of a

Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP) and appropriate fee.

## **FACTS**

### **VIII.**

On May 25, 2007, division personnel and personnel with the U.S. Army Corps of Engineers (USACE) visited the site to discuss the proposed construction of an impoundment of Gerry Branch located on site. Approximately 10 acres of the site had been cleared in preparation for construction of the impoundment with no erosion prevention and sediment control (EPSC) measures installed. Additionally, it was observed that approximately 1,750 feet of stream bank had been altered within the 10-acre disturbed area. All the trees and much of the vegetation had been removed from the stream banks of Gerry Branch, allowing sediment to enter the stream, resulting in a condition of pollution. Further, there was evidence that construction equipment had operated in the stream channel and crossed the stream in several locations. Upon further investigation, it was determined that the clearing activities had been conducted without coverage under the TNCGP, and stream alteration activities had been conducted without coverage under an ARAP.

Additionally, on May 25, 2007, the Respondent was instructed to immediately stabilize the stream banks and disturbed areas to prevent sediment from entering Gerry Branch.

## **IX.**

On May 30, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the May 25, 2007, site visit. The NOV instructed the Respondent to prevent further erosion of the stream banks and surrounding area, and prevent sediment from entering waters of the state.

## **X.**

On June 1, 2007, the division received correspondence from the Respondent regarding corrective actions taken at the site. The correspondence stated that all stream crossings and exposed areas of the stream banks had been strawed, and the remaining exposed areas had been seeded.

## **XI.**

On June 5, 2007, the division received an ARAP application from the Respondent.

## **XII.**

On June 28, 2007, the division visited the site in response to the June 5, 2007, ARAP application. During the course of the investigation it was determined that EPSC measures that were installed, according to the Respondent's correspondence of June 1, 2007, were inadequate, allowing sediment to enter Gerry Branch and migrate downstream, resulting in a condition of pollution.

Additionally, division personnel observed sediment deposits, approximately 4-inches in depth, in Gerry Branch at the 10-acre impacted area extending approximately one-half mile downstream.

### **XIII.**

On June 29, 2007, the division issued a second NOV to the Respondent for violations observed during the June 28, 2007, site investigation. The NOV notified the Respondent that in order to avoid further violations, the Respondent must prevent erosion of the stream banks and surrounding area, and prevent sediment from entering Gerry Branch.

### **VIOLATIONS**

### **XIV.**

By physically altering waters of the state without authorization under an ARAP, and by conducting construction activities without authorization under the TNCGP, the Respondent has violated T.C.A. §§69-3-108(a) and (b) and 69-3-114(b), which state:

T.C.A. §69-3-108:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
  - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

## XV.

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. §§69-3-114(a), as referenced below, and 69-3-114(b), as referenced above.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has



been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

### **XVI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, submit a NOI, site-specific Storm Water Pollution Prevention Plan (SWPPP), and associated fee to obtain coverage under the TNCGP for construction activities occurring at the site. The NOI, SWPPP, and fee shall be submitted to the manager of the division's Columbia Environmental Field Office (CLEFO) located at 2484 Park Plus Drive, Columbia, Tennessee 38401.
2. The Respondent shall, within FOURTEEN (14) DAYS of receipt of this Order, implement appropriate EPSC measures designed by a professional engineer or other qualified professional to assure that no material leaves the site and enters waters of the state and provide written notification of completion to the manager of the division's Columbia Environmental Field Office (CLEFO) located at the address referenced in Item 1 above.
3. The Respondent shall maintain appropriate EPSC measures designed by a professional engineer or other qualified professional to assure that no material leaves the site and enters waters of the state. These professionally designed controls shall be maintained until project completion.

4. The Respondent shall, within FOURTEEN (14) DAYS of receipt of this Order, submit for division approval a corrective action plan for the removal of sediment accumulations from the impacted portions of Gerry Branch. The plan shall include, but not be limited to, the methods to be used during sediment removal activities and a schedule of implementation for the proposed activities. The plan shall be submitted to the manager of the division's CLEFO located at the address referenced in Item 1 above.
5. The Respondent shall, within THIRTY (30) DAYS of division approval, complete the activities outlined in the approved corrective action plan and notify the manager of the division's CLEFO upon completion.
6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00).
  - a. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
  - b. The Respondent shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
  - c. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
  - d. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

- e. The Respondent shall pay THREE THOUSAND DOLLARS (\$3,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.
  - f. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 5 above in a timely manner.
7. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order.

To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The director will reply to the Respondent's request in

writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 31<sup>st</sup> day of July, 2007.



Paul E. Davis, P.E.

Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

T.C.A. §§69-3-109 and 69-3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, at the address above. Please write your case number on all payments and all correspondence concerning this matter.